



## Reasons for Decision

Michel Brunet,

*applicant,*

*and*

Communications, Energy and Paperworkers Union  
of Canada,

*respondent,*

*and*

Fun Télécom Inc.,

*employer.*

Board File: 28410-C

Neutral Citation: 2011 CIRB 560

January 5, 2011

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The Canada Industrial Relations Board (the Board) was composed of Mr. Claude Roy, Vice-Chairperson, and Messrs. Daniel Charbonneau and Patrick J. Heinke, Members.

Section 16.1 of the *Canada Labour Code (Part I – Industrial Relations)* (the *Code*) provides that the Board may decide any matter before it without holding an oral hearing. Having reviewed all of the material on file, the Board is satisfied that the documentation before it is sufficient for it to decide the matter without holding an oral hearing.

### **Parties' Representatives of Record**

Mr. Michel Brunet, on his own behalf;

Mr. Olivier Carrière, for the Communications, Energy and Paperworkers Union of Canada;

Mr. Gérard Morency, for Fun Télécom Inc.

These reasons for decision were written by Mr. Claude Roy, Vice-Chairperson.

### **I–Nature of the Application**

[1] On October 6, 2010, Mr. Michel Brunet (the applicant), representing a number of employees of Fun Télécom Inc. (the employer), filed an application pursuant to section 38 of the *Code* for an order revoking the certification of the Communications, Energy and Paperworkers Union of Canada (the certified bargaining agent or the union) as bargaining agent for the employees of Fun Télécom Inc.

### **II–The Facts**

[2] On February 6, 2009, the Board certified the union as bargaining agent for a unit of employees of the employer following a partial sale of business within the meaning of section 44 of the *Code* (order 9602-U). At the time that this revocation application was filed, the bargaining unit covered by the bargaining certificate consisted of the following:

all technicians working for Fun Télécom Inc., excluding all those automatically excluded by law.

[3] The union and the employer are parties to a first collective agreement covering the period from September 1, 2009, to October 31, 2010. The Board is of the view that the application for revocation was filed within the time frame set out in sections 24 and 38(2) of the *Code*.

[4] The application for revocation is signed by Mr. Michel Brunet, as advisor for the employees of Fun Télécom Inc. Attached to the application is a list of employees and duly signed confidential statements indicating that they no longer wish to be represented by the union, statements allowing him to allege that the union no longer represents the majority of the employees in the unit covered by the bargaining certificate issued by the Board.

[5] The applicant is not an employee of Fun Télécom Inc. and his name is not on the list of employees attached to the application for revocation or on the list provided by the employer on October 14, 2010.

[6] On October 7, 2010, the Board sent the applicant a letter of instructions regarding the steps to be taken in a revocation matter. It attached two copies of a form to be signed by the applicant to attest to the accuracy of the confidential statements in support of the application. In its letter, the Board also provided the name of the investigating officer assigned to investigate and verify all documents and statements submitted by the parties to the application for revocation.

[7] The certificate of accuracy, to be signed by the applicant and witnessed, sets out the criteria for an applicant to file an application for revocation, as follows:

1. That I have read and understand the *Canada Industrial Relations Board Regulations, 2001*. [You can obtain the *Canada Industrial Relations Board Regulations, 2001*, and the *Canada Labour Code (Part I - Industrial Relations)* through the Board's website at [www.cirb-ccir.gc.ca](http://www.cirb-ccir.gc.ca).]
2. That I am an employee of the respondent employer in the bargaining unit covered by this application.
3. That I represent a majority of the employees in the bargaining unit.
4. That to my knowledge all signatories in support of this application are expressing their true wishes.
5. That I understand that the investigating officer has the authority to investigate and verify all documents and statements made by parties to this application.
6. That I understand that any misrepresentations or irregularities in evidence provided to the Investigating Officer could result in the rejection of all or part of the evidence submitted and the rejection of the application.

[8] On the same day, the Board informed the employer of the application for revocation and sent it a copy thereof, while ensuring the confidentiality of the employees' wishes pursuant to section 35 of the *Canada Industrial Relations Board Regulations, 2001* (the *Regulations*). The Board ordered the employer to post the Notice to Employees for a period of seven days, complete the certificate of posting attached to the Board's letter (section 11 of the *Regulations*) and send the Board a list of employees at October 6, 2010, the date on which the application for revocation was filed, which the employer did on October 14, 2010.

[9] The Board informed the certified bargaining agent of the application for revocation on that same day.

[10] On October 14, 2010, the applicant sent the Board the confidential statements of the employees of Fun Télécom Inc. dated October 9 and 13, 2010, authorizing him to file an application for revocation on their behalf. According to the statements, each employee

... approve(s) the mandate given to Mr. Michel Brunet to file an application for revocation of union certification on behalf of the employees of Fun Télécom and to represent us before the Canada Industrial Relations Board.

(translation)

[11] On October 20, 2010, the employer sent the Board the certificate of posting indicating that the notice had been posted from October 7 to 19, 2010, in its three facilities.

[12] On October 22, 2010, the certified bargaining agent advised the Board of its position, as follows:

In response to your letter of October 7, 2010, this is to advise you that we do not intend to submit a response to the application in question given the considerable effort made by the employer and its representatives in relation to the process undertaken by the applicant.

Given that the Board is more than familiar with the employer and its representatives, we rely on the Board's good judgment to assess the employees' wishes.

(translation)

[13] On October 25, 2010, the applicant sent the Board the duly signed and witnessed certificate of accuracy. What was unusual about this document was that the applicant had crossed out paragraph 2 of the certificate, which stated:

2. That I am an employee of the respondent employer in the bargaining unit covered by this application.

[14] The applicant was clearly indicating that he was not an employee of Fun Télécom Inc.

### III-The Law

[15] Section 38 of the *Code* makes the following provisions with regard to applications for revocation:

38.(1) Where a trade union has been certified as the bargaining agent for a bargaining unit, any employee who claims to represent a majority of the employees in the bargaining unit may, subject to subsection (5), apply to the Board for an order revoking the certification of that trade union.

(2) An application for an order pursuant to subsection (1) may be made in respect of a bargaining agent for a bargaining unit,

(a) where a collective agreement applicable to the bargaining unit is in force, only during a period in which an application for certification of a trade union is authorized to be made pursuant to section 24 unless the Board consents to the making of the application for the order at some other time; and

(b) where no collective agreement applicable to the bargaining unit is in force, at any time after a period of one year from the date of certification of the trade union.

(3) Where a collective agreement applicable to a bargaining unit is in force but the bargaining agent that is a party to the collective agreement has not been certified by the Board, any employee who claims to represent a majority of the employees in the bargaining unit may, subject to subsection (5), apply to the Board for an order declaring that the bargaining agent is not entitled to represent the employees in the bargaining unit.

(4) An application for an order pursuant to subsection (3) may be made in respect of a bargaining agent for a bargaining unit,

(a) during the term of the first collective agreement that is entered into by the employer of the employees in the bargaining unit and the bargaining agent,

(i) at any time during the first year of the term of that collective agreement, and

(ii) thereafter, except with the consent of the Board, only during a period in which an application for certification of a trade union is authorized to be made pursuant to section 24; and

(b) in any other case, except with the consent of the Board, only during a period in which an application for certification of a trade union is authorized to be made pursuant to section 24.

(5) An application under subsection (1) or (3) must not, except with the consent of the Board, be made in respect of the bargaining agent for employees in a bargaining unit during a strike or lockout of those employees that is not prohibited by this Part.

[16] Section 36 of the *Regulations* sets out the requirements with regard to employees' confidential statements of their wishes:

36.(1) In addition to the information required for an application made under sections 10 and 33, an application made by an employee under section 38 of the *Code* must include a separate and confidential

statement, signed by each employee whom the applicant claims to represent, stating that they do not wish to be represented by the bargaining agent and authorizing the applicant to act on their behalf.

(2) The statement described in subsection (1) shall show the printed name, the date on which each employee signed the statement, and that date shall be not more than six months before the date on which the application is filed.

[17] Sections 6(1)(c) and 6(2) of the *Regulations* set out the following provisions with regard to the representation of the employees:

6.(1) An application, response, reply or request to intervene filed with the Board shall be signed as follows:

...

(c) if it is filed by an employee, it shall be signed by the employee or by any individual authorized by the employee.

(2) For the purpose of subsection (1), the Board may require that an authorization be given in writing and filed with the Board.

[18] Further, section 39 of the *Regulations* provides as follows with regard to new applications for revocation:

39. Any employee shall not file a new application for revocation of certification in respect of the same bargaining unit until six months have elapsed from the date on which a previous application was rejected.

[19] In addition, sections 16(*m*) and 114 of the *Code* state the following:

16. The Board has, in relation to any proceeding before it, power

...

(*m*) to abridge or extend the time for doing any act, filing any document or presenting any evidence in connection with a proceeding;

...

114. No proceeding under this Part is invalid by reason only of a defect in form or a technical irregularity.

#### **IV—Analysis and Decision**

[20] The application for revocation filed on October 6, 2010, by Mr. Brunet on behalf of the employees of Fun Télécom Inc. must be rejected.



[21] Contrary to the requirements under section 38 of the *Code* and section 36 of the *Regulations*, the applicant is not an employee of Fun Télécom Inc. In *Ken Robinson*, 2003 CIRB 209, the Board stated the following:

[34] It is well established that an application to terminate a trade union's bargaining rights must meet certain requirements. It must be made by an employee in the bargaining unit, within the time limits prescribed by the *Code*, and without any interference by the employer (see *Mike Schembri et al.* (1998), 106 di 68, 40 CLRBR (2d) 257; and 98 CLLC 220-040 (CLRB no. 1221); and *Uli Henssler et al.* (1997), 105 di 45; 38 CLRBR (2d) 96; and 98 CLLC 220-003 (CLRB no. 1211)). Additional requirements come into play in the case where a first collective agreement has not yet been concluded (see *Jean-Claude Harrison et al.* (1983), 53 di 85; and 4 CLRBR (NS) 258 (CLRB no. 417); and *Donald Nosworthy* (1981), 45 di 153 (CLRB no. 330)).

[22] In *Coopérative agricole Grains D'Or*, 2010 CIRB 509, the Board also stated that an application for revocation had to be filed by an employee.

[23] The application for revocation was filed by Mr. Michel Brunet, who is not an employee of Fun Télécom Inc. Even the wording of the confidential statements signed by the employees no longer wishing to be represented by the union indicates that each employee

... approve(s) the mandate given to Mr. Michel Brunet to file an application for revocation of union certification on behalf of the employees of Fun Télécom and to represent us before the Canada Industrial Relations Board.

[24] Nonetheless, on October 25, 2010, after he had received the mandate to represent the employees, Mr. Brunet himself signed a certificate of accuracy and crossed out paragraph 2, which relates to the required employee status.

[25] The application therefore does not comply with the requirement under section 38 of the *Code* and section 36(1) of the *Regulations* that the person making the application be an employee.

[26] Alternatively, the Board considered the application of section 6(1)(c) of the *Regulations* in this matter, which reads as follows:

6.(1) An application, response, reply or request to intervene filed with the Board shall be signed as follows:

...

(c) if it is filed by an employee, it shall be signed by the employee or by any individual authorized by the employee.

[27] Had this provision of the *Regulations* been applicable in this case, a matter not decided by the Board, the application for revocation would still have been rejected.

[28] Indeed, section 36(1) of the *Regulations* provides that an application for revocation filed by an employee must include a separate and confidential statement, signed by each of the employees, stating that the employees do not wish to be represented by the bargaining agent and authorizing the applicant to act on their behalf. In other words, there is a dual requirement that the employees express their wish to no longer be represented by the bargaining agent and that they give the applicant authorization to represent them for the purpose of filing the application with the Board. It is clear that the confidential statement concerning employees' wishes and the applicant's authorization must be included with the application for revocation when it is filed.

[29] In this matter, when the application for revocation was filed on October 6, 2010, the file contained only the confidential statements of the employees stating that they wished to opt out of the union. It was not until October 14, 2010, that Mr. Brunet provided the Board with the statements of the employees of Fun Télécom Inc. authorizing him to file an application for revocation on their behalf. Yet he was bound by the requirement to produce the confidential statements by the employees concerning their wish to no longer be represented by the union and authorizing him to file the application on their behalf when he filed the application.

[30] The Board further notes that the authorizations signed by the employees were dated October 9 and 13, 2010, and thus had not been signed on October 6, 2010, the date on which the application for revocation was filed. Mr. Brunet therefore was not authorized to file the application when he did so. Moreover, all of the authorizations were submitted on October 14, 2010, even though the application for revocation had been filed on October 6, 2010, contrary to section 36(1) of the *Regulations*.



[31] The Board has a duty to verify whether an employee is authorized to act on behalf of other employees as of the date of the filing of the application for revocation. In *Danielle Ferguson*, 2008 CIRB 427, the Board clearly stated the following in this regard:

[15] It is clear that at the time that Ms. Ferguson's section 38 application for revocation was filed on October 3, 2008, she was not the person authorized to file it by the employees whom she claimed to represent. The petitions that Ms. Ferguson filed on October 3 all named Mr. Lee as the authorized representative. At that time, Mr. Lee's application was still pending, as the Board had not yet granted him leave to withdraw it. The applicant's attempt to file new petitions that did authorize her to represent these employees cannot be accepted, because all of the new petitions were signed and dated after the date on which the instant application for revocation was filed. Therefore, Ms. Ferguson's section 38 application is not in compliance with the requirements set out in section 36(1) of the *Regulations*. As she was not the authorized representative of the employees in the bargaining unit at the time that she filed the application, the applicant's revocation application is not properly before the Board and must therefore be rejected.

[32] The fact that the application was not filed by an employee and the fact that the confidential statements authorizing the applicant to act on behalf of the employees had not been signed at the time of the filing of the application for revocation are substantive defects, not defects of form covered by section 114 of the *Code*. The Board is accordingly unable to accept the irregular and untimely filing of the said authorizations under section 16(m) of the *Code*.

#### **V-Conclusion**

[33] The application for revocation is consequently dismissed.

[34] Further, in view of the authorizations signed by the employees and the confidential statements regarding their wish to no longer be represented by the bargaining agent, the provision in section 39 of the *Regulations* to the effect that a bargaining unit may not file a new application for revocation for six months applies to the bargaining unit in question here.

[35] This is a unanimous decision of the Board.

Claude Roy  
Vice-Chairperson

Daniel Charbonneau  
Member

Patrick J. Heinke  
Member